



64-J-WP-6290-23

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6290 OF 2023

Washim District Liquor Bar Association
Hotel Palace, 3rd Floor, Near Bus Stand,
Risod, District Washim, Thr. its President,
Mr Shankar Ingole

... Petitioner

-vs-

1. State of Maharashtra,
Through The Principal Secretary,
Department of State Excise,
Government of Maharashtra,
Mantralaya, Mumbai

2. The District Collector, Washim

3. The Superintendent,
State Excise Department, Washim

... Respondents

Shri Sahil Dewani, Advocate for petitioner.

Ms N. P. Mehta, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE : September 27, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The petitioner challenges the order dated 12/09/2023 passed under Section 142(1) of the Maharashtra Prohibition Act, 1949 (for short, the Act of 1949) to the extent it directs closure of liquor shops that are located within the jurisdiction of the Police Stations indicated

therein. The directions pertain to closure of said liquor shops on 19/09/2023, 28/09/2023, 29/09/2023 and 30/09/2023.

2. While issuing notice, an interim order was passed staying the said order to the extent it was to operate for 19/09/2023. The learned counsel for the petitioner submits that insofar as the direction of closure of liquor shops on 28/09/2023 is concerned, the order does not require interference since it relates to closure of liquor shops in the entire State. He presses the challenge insofar as closure is directed on 29/09/2023 and 30/09/2023.

3. Heard the learned counsel for the parties and perused the reply filed on behalf of respondent Nos.2 and 3. According to the learned counsel for the petitioner the impugned order directing closure of liquor shops that were falling within the jurisdiction of the concerned Police Stations is without any material and has been issued only on the apprehension of likelihood of breach of law and order. He seeks to rely upon the decisions in *Parbhani Jilla Daru Vikreta Sanghatana vs. State of Maharashtra and ors.* 2018 (1) Mh.L.J. 343 and Writ Petition No.2928/2019 (*Nitin s/o Nagoraoji Mohod and anr. vs. The State of Maharashtra, Thr. The Principal Secretary (State Excise), Mantralaya, Mumbai and anr.*) decided on 02/04/2019.

4. On the other hand, the learned Assistant Government Pleader has referred to the affidavit in reply in which reference is made to the communication dated 11/09/2023 issued by the Superintendent of Police to the Collector indicating that there is possibility of breach of law and order on the said dates.

5. If the impugned order is perused in the context of the decisions referred to herein above, it becomes clear that the apprehension expressed is without indicating any material for its basis. Mere reference to apprehension is held not to be sufficient for passing an order under Section 142(1) of the Act of 1949. We find that the observations in paragraph 7 of the decision in *Parbhani Jilla Daru Vikreta Sanghatana* (supra) as followed in the subsequent decision in *Nitin s/o Nagoraoji Mohod* (supra) squarely apply to the facts of the present case. The impugned order has been issued merely in view of the communication issued by the Superintendent of Police. It does not indicate any independent application of mind as required by Section 142(1) of the Act of 1949.

6. For aforesaid reasons and as it is found that the impugned order is contrary to the law laid down in the decisions referred to herein above, the following order is passed :

The order dated 12/09/2023 shall operate only insofar as it directs closure of liquor shops in Washim district on 28/09/2023. It shall not operate on 29/09/2023 and 30/09/2023 as indicated to the areas falling within the Police Stations mentioned therein.

6. Rule is made absolute in aforesaid terms with no order as to costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)